



Steven L. Beshear
Governor

Leonard K. Peters
Secretary
Energy and Environment Cabinet

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

David L. Armstrong
Chairman

James Gardner
Vice-Chairman

John W. Clay
Commissioner

June 30, 2008

Terry Goins
Barkley Lake Water District
1420 Canton Road
P. O. Box 308
Cadiz, KY 42211

CERTIFICATE OF SERVICE

RE: Case No. 2008-00047
Barkley Lake Water District

I, Stephanie Stumbo, Executive Director of the Public Service Commission, hereby certify that the enclosed attested copy of the Commission's Order in the above case was served upon the addressee by U.S. Mail on June 30, 2008.

Executive Director

SS/tw
Enclosure

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

FILING OF BARKLEY LAKE WATER DISTRICT)
REQUESTING A DEVIATION FROM TARIFF) CASE NO. 2008-00047
CONCERNING LATE FEE PENALTIES)

O R D E R

On February 4, 2008, Barkley Lake Water District (“Barkley Lake”) filed a request to deviate from its tariff rate for late-payment penalties. Based on the following analysis, the Commission finds that Barkley Lake may not assess a late-payment fee on any customers’ January 2008 payments that were delivered to the post office between January 3 and January 11, 2008.

BACKGROUND

Barkley Lake, a water district organized pursuant to KRS Chapter 74, owns and operates facilities that distribute and furnish water to the public. It serves approximately 4,939 residential customers in Caldwell, Christian, Lyon, and Trigg counties, Kentucky.¹ Barkley Lake is a utility subject to Commission jurisdiction.²

As per its tariff, Barkley Lake bills its customers monthly, and the utility lists its post office box as its address on the billing statements. The tariff states that “[p]ayment must be received, not postmarked, before 8 a.m. on the 16th day of the month.” If a

¹ Annual Report of Barkley Lake Water District to the Kentucky Public Service Commission for the Calendar Year Ending December 31, 2007 at 5 and 27.

² KRS 278.010(3)(d); KRS 278.015; KRS 278.040(1).

payment is not made by the 16th of the month, the tariff dictates that a 10 percent late-payment fee be assessed.

Between January 3 and January 11, 2008, Barkley Lake's post office box was overwhelmed with customers' payments. If the box overflows with mail, the post office stores the surplus mail behind the counter and typically places a note in the post office box to notify Barkley Lake that there is extra mail to be picked up. In January 2008, however, the utility was initially unaware that it had additional mail that was not in its box. It is unclear whether the postal clerk failed to put a notice in Barkley Lake's box or whether Barkley Lake employees failed to observe the notice. On January 22, 2008, the post office brought the issue of the surplus mail to Barkley Lake's attention. Barkley Lake subsequently learned that 351 customer payments were at the post office prior to January 16, 2008, but were not retrieved until January 22, 2008.

Barkley Lake subsequently filed this request for deviation from its tariff, hoping to avoid billing the 351 customers who were inadvertently affected by these events.

ANALYSIS

KRS 278.160 codifies the "filed rate doctrine," which requires a utility to file with the Commission "schedules showing all rates and conditions for service established by it and collected and enforced."³ It further states:

No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.⁴

³ KRS 278.160(1).

⁴ KRS 278.160(2).

Moreover, KRS 278.170(1) requires that a utility enforce the assessment and collection of rates in a uniform and non-discriminatory manner.

This inflexible, and sometimes harsh, doctrine ensures rate uniformity and equality among customers. Neither equitable considerations nor a utility's negligence may serve as a basis for departing from the filed rate schedules.⁵ Any deviations from the filed rate schedule would encourage disparate treatment, which is inappropriate for a public utility.

In the present case, Barkley Lake's tariff states that "[p]ayment must be received, not postmarked, before 8 a.m. on the 16th day of the month," and a customer's payment that is received after that deadline is subject to a 10 percent penalty.

The inflexibility of the filed rate doctrine makes its application easy. If Barkley Lake receives a customer's payment before 8:00 a.m. on the 16th day of the month, it cannot charge the 10 percent late fee. If Barkley Lake does not receive a customer's payment before 8:00 a.m. on the 16th day of the month, it must charge the 10 percent late fee.

The facts of this case weigh in favor of finding that the utility received the payments prior to 8:00 a.m. on January 16. Payments were delivered to Barkley Lake's post office box, which was the only address identified on the billing statement, between January 3 and January 11. The payments were available for the utility to pick up, but either the postal service failed to notify Barkley Lake about the additional mail or Barkley

⁵ See *Boone County Sand & Gravel Co. v. Owen County Rural Elec. Coop. Corp.*, 779 S.W.2d 944 (Ky. Ct. App. 1989).

Lake's employees overlooked the notice. As a result, the utility's regular and routine practice was not followed.⁶ Courts have made similar findings in other contexts.⁷

Accordingly, the Commission finds that Barkley Lake is deemed to have received, before 8:00 a.m. on January 16, 2008, all customers' payments that were delivered to the post office between January 3 and January 11, even though the payments were not picked up until January 22, 2008.

IT IS THEREFORE ORDERED that:

1. Barkley Lake shall not assess a late-payment fee on any customers' January 2008 payments that were delivered to the post office between January 3 and January 11, 2008.
2. This case is closed and is removed from the Commission's docket.

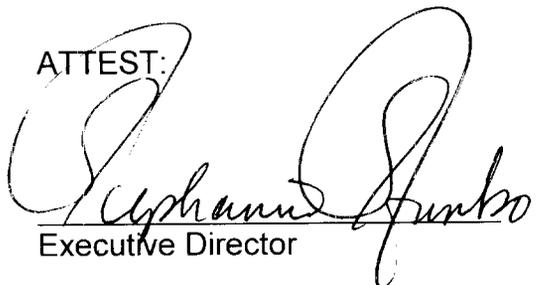
⁶ Barkley Lake has stated that it has implemented new procedures to ensure this does not happen in the future.

⁷ In interpreting the filing requirement for a review of an order by the Board of Immigration Appeals, the U.S. Court of Appeals for the Ninth Circuit ruled that a petition has been received by the clerk's office on the day that it arrived at the post office box, even though it was not picked up and physically delivered to the clerk's office until the next day. *Sheviakov v. Immigration and Naturalization Serv.*, 237 F.3d 1144, 1148 (9th Cir. 2001). The Colorado Court of Appeals found that a shareholder's demand for payment prior to a proposed corporate merger was "received" by the corporation on the day the demand was delivered to the post office box designated by the corporation as the address at which it would receive such demands. *M Life Insurance Co. v. Sapers & Wallack Insurance Agency*, 962 P.2d 335 (Colo. Ct. App. 1998). The Georgia Court of Appeals held that a complaint was timely filed when it was delivered to a post office box prior to the deadline, but was not picked up by court personnel in its routine and regular practice, and was subsequently stamped with a date past the filing deadline. *Lavan v. Philips*, 362 S.E.2d 138, 140 (Ga. Ct. App. 1987).

Done at Frankfort, Kentucky, this 30th day of June, 2008.

By the Commission

ATTEST:



Stephanie Jumbo
Executive Director

Case No. 2008-00047